



New South Wales

# Electoral Legislation Amendment (Local Government Elections) Bill 2021

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are to—

- (a) amend the *Electoral Funding Act 2018* to enable a party agent of a registered party to elect to be the person responsible for disclosing certain political donations and electoral expenditure relating to local government, and
- (b) amend the *Local Government Act 1993* to—
  - (i) clarify the relationship between the regulations under that Act and arrangements between a council and the Electoral Commissioner for administration of local council elections, and
  - (ii) provide for the making of rules for the safe conduct of council elections during the COVID-19 pandemic, and
  - (iii) clarify that the postponement of a council election by the Minister does not affect the validity of certain council resolutions passed and arrangements entered into by the council.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on 1 July 2021.

## **Schedule 1      Amendment of Electoral Funding Act 2018 No 20**

**Schedule 1[2]** inserts proposed section 14(4A) into the *Electoral Funding Act 2018* to enable a party agent of a registered party to decide to be the person responsible for making a disclosure of political donations received or made, and electoral expenditure incurred, by or on behalf of the following—

- (a) an elected member who is a councillor who is a member of the registered party,
- (b) a candidate in a council election who is a member of the registered party,
- (c) a group in a council election where 1 or more of the members of the group are members of the registered party.

Currently, under section 14(4) of the *Electoral Funding Act 2018*, a party agent of a registered party may only become the person who is responsible for making a disclosure for an elected member, candidate or group by lodging a written consent with the Electoral Commissioner made with the agreement of the elected member, candidate or group concerned.

**Schedule 1[1] and [3]** make consequential amendments. **Schedule 1[4]** inserts machinery provisions and **Schedule 1[5]** inserts a related savings provision.

## **Schedule 2      Amendment of Local Government Act 1993 No 30**

**Schedule 2[1]** amends the *Local Government Act 1993*, section 296 to clarify that a provision of an election arrangement between a council and the Electoral Commissioner for the administration of an election of the council has no effect if the provision is inconsistent with, or would prevent a person from casting a vote in a way provided by, the regulations under that Act.

The proposed amendment also provides that the Electoral Commissioner does not contravene the requirement to administer an election in accordance with an election arrangement by doing, or omitting to do, something for the purposes of complying with the regulations.

**Schedule 2[2]** inserts proposed section 296C into the *Local Government Act 1993* to enable the Electoral Commissioner to specify rules for the safe conduct, during the COVID-19 pandemic, of elections administered by the Electoral Commissioner under arrangements with councils. The proposed section makes it clear that the Electoral Commissioner does not contravene its obligation to administer elections in accordance with arrangements with councils for something done, or not done, for the purpose of complying with COVID-19 safe election rules.

**Schedule 2[3]** amends the *Local Government Act 1993*, section 318B to clarify that the postponement of a council election does not affect the validity or operation of certain resolutions passed, or arrangements entered into, by the council for the administration of the election. **Schedule 2[4]** provides that the proposed amendment extends to resolutions passed and arrangements entered into before the commencement of the provision in relation to an election that has been postponed.



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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Electoral Legislation Amendment (Local Government Elections) Act 2021*.

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4

**2 Commencement**

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This Act commences on 1 July 2021.

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<b>Schedule 1</b>	<b>Amendment of Electoral Funding Act 2018 No 20</b>	1
<b>[1] Section 14 Person responsible for making disclosures</b>		2
Omit section 14(3). Insert instead—		3
(3) However, despite subsection (2), a party agent is the person responsible for making a disclosure required under this Part for an elected member, candidate or the group, if—		4
(a) the party agent consents in accordance with subsection (4) to be the person responsible for making the disclosure, or		5
(b) the party agent decides in accordance with subsection (4A) to be the person responsible for making the disclosure.		6
<b>[2] Section 14(4A)</b>		7
Insert after section 14(4)—		8
(4A) A party agent of a registered party may, by written notice given to the Electoral Commission in an approved way, decide to be the person who is responsible for making a disclosure required under this Part for the following—		9
(a) an elected member who is a councillor, including the mayor, of a local government area who is a member of the registered party,		10
(b) a candidate in a local government election who is a member of the registered party,		11
(c) a group in a local government election where all, or 1 or more, of the members of the group are members of the registered party.		12
<b>[3] Section 14(5)</b>		13
Omit “such a consent or agreement”.		14
Insert instead “a consent or agreement under subsection (4)”.		15
<b>[4] Section 14(5A)–(5C)</b>		16
Insert after section 14(5)—		17
(5A) A party agent may withdraw a decision under subsection (4A) by written notice given to the Electoral Commission in an approved way.		18
(5B) A party agent must give a copy of a written notice given under subsection (4A) or (5A) to the elected member or candidate or the members of the group concerned as soon as practicable after giving the written notice to the Electoral Commission.		19
(5C) A written notice given under subsection (4A) or (5A) is not invalid because of a failure to comply with subsection (5B).		20
<b>[5] Schedule 2 Savings, transitional and other provisions</b>		21
Insert after Part 4—		22

<b>Part 5</b>	<b>Provision consequent on enactment of Electoral Legislation Amendment (Local Government Elections) Act 2021</b>	1
		2
		3
<b>21</b>	<b>Disclosures of political donations and electoral expenditure</b>	4
	Section 14, as in force immediately before the commencement of the <i>Electoral Legislation Amendment (Local Government Elections) Act 2021</i> , continues to apply to the disclosure of political donations received or made, and electoral expenditure incurred, before that commencement.	5
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## Schedule 2 Amendment of Local Government Act 1993 No 30

### [1] Section 296 How elections are to be administered

Insert after section 296(2)—

(2A) To avoid doubt—

- (a) a provision of an election arrangement that is inconsistent with, or would prevent a person from casting a vote in a way provided by, the regulations has no effect, and
- (b) the Electoral Commissioner does not contravene subsection (2) by doing, or omitting to do, something for the purpose of complying with provisions of the regulations concerning the conduct of an election to which the arrangement relates.

(2B) Subsection (2A) extends to regulations made after the election arrangement is entered into with the Electoral Commissioner.

### [2] Section 296C

Insert after section 296B—

#### 296C Conduct of COVID-19 safe elections by Electoral Commissioner

- (1) This section applies to an election administered by the Electoral Commissioner.
- (2) The Electoral Commissioner may, by a written order published on the NSW Electoral Commission website, specify rules (*COVID-19 safe election rules*) for the safe conduct of elections during the COVID-19 pandemic.
- (3) In determining COVID-19 safe election rules, the Electoral Commissioner must have regard to—
  - (a) applicable public health orders concerning the COVID-19 pandemic, and
  - (b) relevant health recommendations made by NSW Health concerning the holding of public events during the COVID-19 pandemic.
- (4) The Electoral Commissioner does not contravene section 296(2) in relation to an election arrangement mentioned in the subsection for something done, or not done, for the purpose of complying with COVID-19 safe election rules.
- (5) This section is repealed on—
  - (a) 1 January 2022, or
  - (b) a later day, not later than 26 March 2022, prescribed by the regulations.
- (6) In this section—

*public health order* means an order made under the *Public Health Act 2010*, section 7 or 8.

### [3] Section 318B Postponement of elections

Insert after section 318B(4)—

- (4A) To avoid doubt, subsection (4)(c) does not affect the validity or operation of resolutions passed, or arrangements entered into, by a council under Part 6, Division 1.



<b>[4] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts</b>	1
	2
Insert after Part 41—	3
<b>Part 42 Provision consequent on enactment of Electoral Legislation Amendment (Local Government Elections) Act 2021</b>	4
	5
	6
<b>134 Postponement of elections</b>	7
Section 318B(4A) extends to resolutions passed, and arrangements entered into, before the commencement of that subsection in relation to an election postponed under section 318B before the commencement.	8
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